

No. 9(1)81-8Lab-/4841. In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s General Manager, Haryana, Roadways, Bhiwani.

**BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK**

Reference No. 166 of 1977

between

**SHRI RAM BHAGAT, WORKMAN AND THE MANAGEMENT OF M/S GENERAL MANAGER,
HARYANA ROADWAYS, BHIWANI**

Present :

Shri Sagar Ram Gupta, for the workman.

Shri Vijay Veer Singh, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/HSR/389-77/51386, dated 16th December, 1977 under section 10(1)(c) of the I.D. Act for adjudication of the dispute existing between Shri Ram Bhagat, workman and the management of M/s Haryana Roadways, Bhiwani. The term of the reference was :—

Whether the termination of services of Shri Ram Bhagat was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the same filed their respective pleadings and following issues were framed on 21st July, 1978 by my learned predecessor on the basis of the pleadings of the parties :—

- (1) whether the domestic enquiry held by the management is fair and is in accordance with the principles of natural justice and the finding is not perverse ?
- (2) The dispute referred to be treated as issue No. 2.

Issue No. 1 was decided after recording evidence and after hearing arguments of the parties by my learned predecessor on 16th August, 1979 holding the enquiry as in far and not in accordance with the principles of natural justice and the findings of the Enquiry Officer were perverse. The parties adduced evidence on Issue No. 2 thereafter. The management examined two witness Shri Sham Sunder duty clerk and Shri Dharam Singh, Duty Inspector as MW-3 and MW-4 respectively. The workman examined Shri Devi Chand, Yard Master, Shri Topan Dass, Driver and himself as WW-1, WW-2 and WW-3 respectively. I also heard the learned representative of the parties with reference to the evidence on the record and have seen the record and decide the issue No. 2 as under :—

MW-3 has avoided to place the truth on record as to who other persons were sitting in the Yard Room alongwith the workman when he sent to the workman to ask him to take the bus to Tosham as the same was getting late. He has stated that there used to be one or two conductors and drivers on spare duty and whenever need be they can be sent for to perform the duties and Shri Topan Dass who was on spare duty was asked to take the bus to Tosham in place of the workman and no over time was required to be paid to Shri Topan Dass MW-4 has stated that he was posted at Bhiwani in the month of February, 1974 and remained there for six to seven months. Then he stated further that on 19th December, 1974 the duty clerk MW-3 came to him and related the refusal of workman to drive the bus to Tosham. This falsifies his own statement and the same cannot be relied upon.

The contention of the workman that he had stomach pain on 19th December, 1974 and reported the same to duty clerk Shri Sham Sunder who asked him to take rest and Shri Topan Dass driver was called to drive the bus onwards to Tosham finds support from the statement of other witnesses WW-1 and WW-2 and stands corroborated. The workman has further given out in his cross-examination that when he wanted to produce Shri Dharam Vir, Duty Inspector in his defence before the Inquiry Officer he did not mean Dharam Vir who has deposed as MW-4 and there was another Dharam Vir, Duty Inspector who was also on duty on that day. He could not produce him as his witness as he had died some five to six months ago. It is

quite possible that the workman might have complained about his stomach ache to another Dharam Vir, who was also the Duty Inspector. As the enquiry has also been proved to be illegal and improper and the management has not been able to prove the justification of the termination and the same is therefore cannot be upheld which is setaside and even otherwise also the punishment is harsh as compared to the charge against the workman which snacks of victimisation which the management has attempted to justify by the show and hoax of enquiry. I, therefore, hold that the termination is unjustified and not in order. The workman is entitled to the relief of reinstatement with full back wages and with continuity of service. The reference is answered and returned in these terms.

Dated : The 22nd April, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 1414, dated 24th April, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court Haryana, Rohtak.

No. 9(1)81-8Lab/4844.- In pursuance of the provision of section 17 of the Industrial Disputes' Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. Haryana State Electricity Board, Chandigarh.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT HARYANA,
ROHTAK

Reference No. 67 of 79

between

SHRI RANDHIR SINGH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA
STATE ELECTRICITY BOARD, CHANDIGARH

Present :

Shri Siri Ram Saini, for the workman.

Shri Jaspal Singh, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/HSR/94-78/12243, dated 16th March, 1979 under section 10(1)(c) of the I.D. Act for adjudication of the dispute existing between Shri Randhir Singh, workman and the management of M/s Haryana State Electricity Board, Chandigarh. The term of the reference was —

"Whether the termination of services of Shri Randhir Singh was justified and in order ? If not to what relief is the entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same, filed their respective pleadings on the basis of which the following issues were framed —

- (1) Whether Shri Jaspal Singh, Law Officer of the H.S.E.B. is not competent to represent the management ?
- (2) Whether the written statement is not signed by the competent authority. If not to what effect ?
- (3) As per the reference.
- (4) Whether an alternative post was offered to the workman and not accepted by him ? If so to what effect ?

Issue No. 1 and 2 were treated as preliminary and were decided by my learned predecessor,—*vide* his order dated 22nd June, 1979. The management examined Shri S.L. Kamra, Head Clerk, Fatehabad as M.W. 1,

Shri Des Raj clerk of the C. M. O. Sirsa as M. W. 2 and Shri K. K. Makkar S. D. O. Ding as M.W. 3 and closed their case. The workman examined Shri Umed Ali as W.W. 1 and himself as M.W. 2 after hearing the learned representatives of the parties and considering the evidence on the record decide the remaining issues as under

Issue No. 3'4. The facts of the case area admitted on both sides. The workman was appointed on 27th October, 1972 as ALM purely on temporary basis for six months, *vide* Ex. M.W.-2/b. His term of service was extended from time to time after giving one day break on the request of the workman and he continued to work on this post after 1975 without applying for further extension of his term of service. He was offered a regular post of A.L.M., *vide* Ex. M.W. 2/j. The workman was required to produce a medical certificate of fitness from the C.M.O. of his district. The medical certificate of the C. M. O. Sirsa is Ex. M.W.2/A which declares the workman temporarily fit for one year and after which he was required to report for re-examination of his vision. On receipt of this report from the C.M.O. the S.E. operation Hissar directed the XEN Fatehabad Division,—*vide* Ex. M. 2 not to offer regular appointment to the workman till he produces a regular/permanent health certificate from the C.M.O. However the official was to be allowed to work as T. Mate. The same was got noted by the workman,—*vide* Ex. M-3 and M-4. Thereafter the services of the workman were terminated,—*vide* Ex. M.W.2/k.

It is a proved fact that the workman has put in about six years of service as A.L.M. with the management. The management had no complaint against the work and conduct of the workman for this period and the same can very safely be taken to be satisfactory as regards his vision is concerned. The C.M.O. Sirsa has not also declared the workman permanently unfit on account of his vision. The management has also not been able to show that if there were any rules which place a bar to the continuance in service of an employe who is not permanently unfit and is temporarily fit for one year. The workman it is just possible had taken the treatment and would have cured his vision and brought it to the normal because it was only a temporary defect. The workman is an illiterate person and he was not informed of the defect of his vision but only at the time of termination of his services. He was not even paid any service compensation nor any notice or notice pay was paid to him and the management has thus violated the mandatory provision of section 25(F) of the I.D. Act rendering the order of termination void *ab initio*. The offer of an alternative post of T. Mate was uncalled for and unjustified as the workman was entitled to continue in his post of A.L.M. for atleast one year or till such period when he was declared permanently unfit for service. The order of termination has been issued by the S.D.O. Ding who was not authorised to pass such an order and the XEN Fatehabad was the Competent Authority in this behalf and no instructions from him are in writing which have not been brought to the record and the same is illegal on this ground also. In view of my findings above hold that the termination of the workman is unjustified and nor in order. The workman is entitled to the relief of reinstatement with full back wages and with continuity of service on the same terms and conditions as are contained in the appointment letter dated 9th June, 1978 which is Ex. M.W.-2/j. The reference is answered and returned in these terms.

The 20th April, 1981

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana, Rohtak.

Endorsement No. 1411, dated the 24th April, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court Haryana,
Rohtak.

No. 9(1)81-8Lab/4847.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Shree Industries Plot No. 102, Industrial cum-Housing Estate Sector 6, Faridabad.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 75 of 1977
between

SHRI BHAGWAN KANWAR, WORKMAN AND THE MANAGEMENT OF M/S SHREE INDUSTRIES,
PLOT NO. 102, INDUSTRIAL-CUM-HOUSING ESTATE, SECTOR-6, FARIDABAD

Present :

Shri Sagar Ram Gupta, for the workman.

Shri R. C. Sharma, for the management.

AWARD

This reference has been referred to this court by the Hon'ble President of India,—*vide* Government order No. ID/FD/1093/23796, dated 20th June, 1977 under section 10(1) of the I. D. Act for adjudication of the dispute existing between the workman Shri Bhagwan Singh and the management of M/s Shree Industries, Faridabad. The term of the reference was :—

"whether the termination of services of Shri Bhagwan Kanwar was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same, filed their respective pleadings and following issues were framed on the basis of the pleadings of the parties :—

(1) whether the reference is bad in law for the preliminary objections, mentioned in the written statement ?

(2) As per reference.

The management first proposed to adduce evidence on vires of enquiry and examined the enquiry officer Shri R. C. Sharma their authorised representative as MW-1 and closed their case. The workman himself appeared as his own witness alongwith Shri Sagar Ram Gupta his authorised representative who appeared as WW-2 and closed his case. The vires of the enquiry were decided by my learned predecessor, *vide* his order, dated 7th February, 1979 holding thereby that the enquiry was not vitiated and findings were based on evidence and were not prevered. Then after the management did not adduce any evidence on the issue of punishment and closed their case. The workman was examined as his own witness on this issue. I heard the learned representative of both the parties and after considering the evidence oral as well as documentary available on the record decide issuewise as under :—

Issue No. 1.—The management did not adduce any evidence on this issue nor pressed this issue during the course of arguments and the burden to prove this issue was on the management which they have not been able to discharge. This issue is therefore, decided against the management.

Issue No. 2.—The management's case is that the workman has dismissed after serving him with charge-sheet on which a proper enquiry was held in accordance with the principles of natural justice and after giving second show cause notice his services were terminated when he was found guilty of the charges as per the findings report submitted by the Enquiry Officer, the charges being of grave and serious nature. From the notice of demand Exhibit M-9 and the statement of claim filed by the workman alongwith his statement appearing as WW-1 it is apparent that the workman has made out a different story afterwards to the one given in his notice of demand. In his notice of demand he has stated that he was on strike for the disputed period for which he was chargesheeted and the termination on this ground amounted to victimisation. Later on in his claim statement he has alleged that due to his union activities the management adopted a hostile attitude towards him and on a show of enquiry he was victimised. His statement as WW-1 has been quite inconsistent throughout. He has stated in his cross-examination that he was not aware as to all the workers were the members of the union which was formed when stated that he used to go to the N.L.O. office and the same union was formed. He further gave out that the Mercantile Employees Association was formed after many days of his termination and the demand notice in his case was also served through the N.L.O. union the course of conciliation proceedings. He has also disowned his demand notice Mark 'A' although he admitted his signature on Exhibit M-9 at point 'X'. He further gave out that he never struck work. His signatures on Exhibit M-9 were obtained by Shri R. N. Roy as Shri Sagar Ram Gupta was not there he went to Shri R. N. Roy. From the facts given above the stand of the workman is a fluctuating one and is not consistent and therefore cannot be believed in. The enquiry held by the management have been held to be fair and proper by my learned predecessor which is to be relied as part of my findings on this issue. Under these circumstances I need not go into the detailed discussion of the number of cases cited by the workman's representative on the plea of victimisation and as the charges against the workman have been proved which are serious acts of misconduct under the standing orders. I am constrained to hold that the termination of the workman is proper and justified and the workman is therefore not entitled to any relief either of reinstatement or back wages. The reference is answered and returned in the above terms.

Dated : The 20th April, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 1408, dated 24th April, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.